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13th Floor Seattle Tower
1218 Third Avenue
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May 9, 1986

Henry Elsen, Esq.
EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: Bingham

Dear Mr. Elsen:

I am in receipt of a copy of your letter to my clients dated May 2, 1986.

Your letter is in serious error and fails to accurately reflect actual events in the following particulars:

1. On October 7, 1986, a request for an extension of time to file the required closure plan was requested. A notice of the pending Idaho tax foreclosure was enclosed. No response to the request for extension was ever received.

2. Mr. Bingham had no responsibility or duty to pay the past due real estate taxes on the Rathdrum property. The record owner is specified on the notice of foreclosure as Mr. Frank Bundy who, in fact, is the fee owner of the property.

3. The tax foreclosure alluded to is not a "sale or transfer" within the contemplation of negative condition 1 of the penalty order.

4. Mr. Bingham has no present right, interest or title in the Rathdrum property due to the tax foreclosure. Upon the tax foreclosure caused by Mr. Bundy's inability or unwillingness to cure the existing tax default performance by Mr. Bingham was rendered impossible and was thus, under law, excused.

In summary, based upon the delay of EPA in responding to a timely request for extension and the intervening impossibility of performance and frustration of purpose precipitated by the tax foreclosure it is disputed that the penalty demanded in your letter is due.

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Telephone (206) 622-6331
MEAD 5.9.86
Let's set up a meeting
for Fri or Mon. w/
Chuck R. to
discuss.

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EPA - REGION X

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Page Two

Additionally, it is my understanding that Kootenai County foreclosed Mr. Bingham's interest in the property with complete notice of the duties of ownership under RCRA. As such, even though no notice is required, Kootenai County has acquired duties of compliance and closure fully enforceable by EPA.

I suggest that a meeting be scheduled to discuss the terms upon which Mr. Bingham's connection with this matter can be terminated and the owners of the property can effect closure.

Very truly yours,



Stephen Navaretta

SN/mjn